



**Federal Communications Commission  
Washington, D.C. 20554**

April 24, 2009

**DA 09- 908**

*In Reply Refer to:*

1800B3-ATS

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In re: New FM, Hudson, Wyoming  
Facility ID No. 166054  
File No. BAPH-20081114AAA

New FM, Las Vegas, New Mexico  
Facility ID No. 171005  
File No. BAPH-20081114AAB

New FM, Kaycee, Wyoming  
Facility ID No. 166055  
File No. BAPH-20081114AAC

KRZX(FM), Monticello, Utah  
Facility ID No. 164260  
File No. BAPH-20081114AAD

KXML(FM), Salmon, Idaho  
Facility ID No. 164259  
File No. BALH-20081114AAE

**Informal Objection**

Dear Counsel:

The staff has under consideration: (1) the above-referenced applications (the “Applications”) filed by Skywest Media LLC (“Skywest”) for consent to assign certain licenses and construction permits to Cochise Media Licenses LLC; (2) an Informal Objection filed by White Park Broadcasting, Inc. (“White Park”) on November 19, 2008;<sup>1</sup> (3) a Response to Informal Objection filed by Skywest on

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<sup>1</sup> We also have a letter submitted by White Park on December 1, 2008. The letter clarifies that the Informal Objection was intended to be filed against all five applications referenced above.

February 10, 2009; (4) a Reply filed by White Park on February 25, 2009; and (5) a Motion for Leave to File Response and Response to Reply (“Motion for Leave and Response”) filed by Skywest on March 18, 2009. For the reasons set forth herein, we deny the Motion for Leave, deny the Informal Objection and grant the Applications.

**Background.** White Park’s Informal Objection derives from a companion proceeding concerning Skywest’s new FM Station at Kaycee, Wyoming.<sup>2</sup> On January 19, 2007, Skywest filed an application to modify the construction permit for the Kaycee facility, proposing operation on Channel 221C2 at Evansville, Wyoming. On May 16, 2007, White Park filed an objection to the modification application in that proceeding. White Park has pending an application to modify the license of Station KDAD(FM), Douglas, Wyoming, to substitute Bar Nunn, Wyoming, as its community of license.<sup>3</sup> The gist of White Park’s objection to the modification application is that “the Commission is unable to process [the KDAD(FM) application] so long as Skywest’s modification application remains pending.”<sup>4</sup> On May 31, 2007, Skywest filed a “Notice of Intent to Respond,” in which it stated that it was in the process of amending its application to respond to the issues raised in White Park’s objection. As White Park notes, fourteen months later, Skywest’s amendment has not yet been filed, nor has it submitted any other pleadings or documents in connection with the modification application.<sup>5</sup> On August 1, 2008, White Park filed a Motion to Dismiss the modification application.

The Applications were accepted for filing on November 14, 2008. White Park filed its Informal Objection on November 19, 2008. In its Informal Objection, White Park requests that the staff “forebear from acting on Skywest Media LLC’s application for consent to assignment of its construction permits and licenses until [the Commission] fully considers the proposed assignor’s actions in connection with the modification of the permit” for the new station at Kaycee, Wyoming.<sup>6</sup>

**Discussion.** As an initial matter, we find that Skywest’s Motion for Leave and Response are unauthorized pleadings and are subject to dismissal without consideration.<sup>7</sup> We therefore deny the Motion for Leave and decline to consider Skywest’s Response to Reply.

Pursuant to the Communications Act of 1934, as amended (the “Act”), informal objections, like petitions to deny, must provide properly supported allegations of fact that, if true, would establish a

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<sup>2</sup> See File No. BMPH-20070119AHH.

<sup>3</sup> See File No. BMPH-20070119AEQ.

<sup>4</sup> Informal Objection at 2.

<sup>5</sup> Subsequent to the filing of White Park’s November 19, 2008, Informal Objection, Skywest filed an opposition in the Kaycee, Wyoming, proceeding on February 12, 2009, and also filed an engineering amendment to the modification application on February 18, 2009.

<sup>6</sup> Informal Objection at 4.

<sup>7</sup> See 47 C.F.R. § 1.45. See, e.g., *Colorado RSA 7(B)(2) Ltd. Partnership*, Order, 15 FCC Rcd 3403 (WTB 2000) (declining to consider unauthorized pleadings).

substantial and material question of fact that grant of the application would be *prima facie* inconsistent with Section 309(a).<sup>8</sup>

The thrust of White Park's argument is that action on Skywest's Applications should be delayed until the staff has considered its conduct in the Kaycee, Wyoming, proceeding. White Park specifically alleges that Skywest has not complied with its obligations under Section 1.65 of the Commission's Rules.<sup>9</sup> However, White Park fails to explain how Skywest has violated the Rules beyond a vague and unsupported reference to Section 1.65. As noted by Skywest, the Rules allow but not do require parties to file a response to an informal objection.<sup>10</sup> Therefore, we cannot agree that SkyWest's failure to carry out a voluntary act presents a substantial and material question of fact as to Skywest's qualifications pursuant to Section 309(e) of the Act.<sup>11</sup> Moreover, Skywest's inaction in the Kaycee, Wyoming, proceeding does not provide a basis for deferring action on the Applications. The Informal Objection attempts to raise issues that are not relevant to the Applications, and White Park simply provides no other grounds for delaying our consent of the Applications. We thus will deny the Informal Objection and grant the Applications.

**Conclusion/Action.** In light of the foregoing, the Motion for Leave filed by Skywest Media LLC is DENIED. The Informal Objection filed by White Park Broadcasting, Inc. IS HEREBY DENIED. The applications (File Nos. BAPH-20081114AAA, BAPH-20081114AAB, BAPH-20081114AAC, BAPH-20081114AAD, BAPH-20081114AAE) for approval to assign the licenses and permits from Skywest Media LLC to Cochise Media Licenses LLC ARE HEREBY GRANTED.

Sincerely,

Peter H. Doyle, Chief  
Audio Division

Media Bureau

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<sup>8</sup> See, e.g., *WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 193, 197 n.10 (1990), *aff'd sub nom. Garden State Broadcasting L.P. v. FCC*, 996 F.2d 386 (D.C. Cir. 1993), *rehearing denied* (Sept. 10, 1993); *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864 (1986) (informal objections, like petitions to deny, must contain adequate and specific factual allegations sufficient to warrant the relief requested).

<sup>9</sup> *Id.* at 3. See 47 C.F.R. § 1.65.

<sup>10</sup> Response at 2, citing 47 C.F.R. § 73.3584.

<sup>11</sup> 47 U.S.C. § 309(e).